IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

MONDAY, THE 4TH DECEMBER 2006 / 13TH AGRAHAYANA 1928

WP(C).No. 32079 of 2006(R)

PETITIONER:

STATE BANK OF TRAVANCORE,
VARKALA BRANCH, THIRUVANANTHAPURAM DISTRICT,
REPRESENTED BY ITS CHIEF MANAGER (AUTHORISED
OFFICER).

BY ADV. SRI.SATHISH NINAN

RESPONDENTS:

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1. THE DISTRICT COLLECTOR,
THIRUVANANTHAPURAM.

2. THE TAHSILDAR, CHIRAYINKEEZH TALUK,
CHIRAYINKEEZH.

3. SMT.S.ANITHA, M/S.BABU INDUSTRIES,
CHERUNNIYOOR P.O., VARKALA.

4. SRI.PREMACHANDRAN NAIR, `PRAVEEN',
CHERUNNIYOOR P.O., VARKALA.

5. KERALA STATE ELECTRICITY BOARD,
THIRUVANANTHAPURAM, REPRESENTED BY ITS
SECRETARY.

6. STATE OF KERALA REPRESENTED BY
SECRETARY TO GOVERNMENT, REVENUE AND TAXES
DEPARTMENT, GOVT. SECRETARIAT, TRIVANDRUM.

R1,2&6 BY G.P. SRI.I.V.PROMOD
R5 BY ADV. SRI.JOSE J. MATHIEAKAL, SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 04/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.N.RAMACHANDRAN NAIR, J.

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W.P.(C) No.32079 of 2006

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Dated this the 4th day of December, 2006.

JUDGMENT

Heard counsel for the petitioner, Govt. Pleader and Standing Counsel for KSEB. Having regard to the contentions raised, I feel W.P. can be disposed of without notice to debtors who are respondents 3 and 4. The property of respondents 3 and 4 are taken over by petitioner-Bank under the provisions of Securitisation Act for recovery of arrears. However, since respondents 3 and 4 are in arrears of sales tax and amount due to KSEB, the Tahsildar has attached the property. This court has held that Government has priority for recovery of arrears of sales tax even over mortgaged property. Therefore, the Tahsildar is obviously free to proceed with sale of the property. So far as the KSEB dues are concerned, even though counsel for the Bank contended that there is no priority over the mortgage debt for such dues, Standing Counsel for KSEB submitted that as per Regulation 15(d) of the Conditions of Supply of Electrical Energy which was applicable for recovery of arrears, there is charge over the property of subscribers. So far as the petitioner's challenge against claim of KSEB is concerned, the matter can be adjudicated by the Tahsildar in a claim petition to be filed by the petitioner. So far as arrears of sales tax is concerned, the position is settled and Government is free to claim priority. In the circumstances, W.P. is disposed of with the following directions:

(1) If the petitioner clears entire arrears due to State and also to KSEB with accrued interest, then the Tahsildar will without recovering any collection charges, accept the same and lift the attachment leaving it open to the Bank to proceed with securitisation proceedings in respect of the property. In that event, the Bank will not be entitled to claim refund based on any priority over KSEB dues.

(2) If the Bank claims that it has priority over KSEB dues, the Tahsildar will settle the matter in a claim petition to be filed by the Bank under Section 46 of the Revenue Recovery Act, but sale of the property will be made by Tahsildar in public auction after notice to the Bank and to the KSEB who are free to give publicity for sale of the property so that it is sold at the highest price to protect the interest of the Bank and KSEB. Payments will be released by the Tahsildar based on orders on claim petition on priority.

C.N.RAMACHANDRAN NAIR
Judge

pms